Working Across Systems: Supporting Children and Youth with Mental Health Needs

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A little about me

• Erin
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Overview

• Principles related to sharing information
• HIPAA - Health Insurance Portability and Accountability Act
• FERPA - Family Educational Rights Privacy Act
• Advocacy

Privacy and Confidentiality

• Privacy protects the rights of an individual to control information that agencies collect, maintain and share.

• Confidentiality protects against the unauthorized disclosure of information that has already been shared by a person.
Privacy and Confidentiality Laws

• Protect privacy
• Preserve dignity
• Protect against harm and embarrassment
• Ensure patients feel safe disclosing sensitive information
• Control of access to information that children and families share

Reasons to Share Information

• Identify and plan for a child’s treatment needs
• Identify and plan for a child’s educational needs
• Promote collaboration and accountability

Balancing

Protecting privacy, preserving dignity, protecting against harm and controlling of access to information

Balanced against

Seeing that the child receives an appropriate education, appropriate treatment and supporting collaboration

Who May Need Information

• Students
• Families
• Educators
• Health and mental health care providers
• People in other agencies that serve children and families
Primary Laws that protect confidential information

- Health Insurance Portability and Accountability Act
- Family Educational Rights and Privacy Act
- State Laws

Who Can Share Information

- Consent
- Confidentiality

Health Confidentiality - HIPAA

- General Rule: Health care providers must protect the confidentiality of personal health information. Providers must have a signed "authorization" in order to share protected health information.
- Exceptions: Some exceptions allow disclosure of records absent a signed release (e.g. for treatment purposes or child abuse reporting)

Who signs the authorization

- Parents/legal guardians generally authorize release of information for minors
- Exception: The minor signs the authorization if the records relate to services that the minor consented to
- Many states allow minors to consent to:
  - Pregnancy related services
  - Outpatient mental health
  - Reportable communicable diseases/STDs
  - HIV counseling and testing
  - Drug and alcohol treatment

**Education records:**
Records that are directly related to a "student" and maintained by an "educational agency or institution"

Personal notes and memory aids that are used only by the person who made them are not educational records. But if notes are shared with or disclosed to another person, notes are educational records.

Parent Rights Under FERPA

- Parents have a right to inspect and review all educational records relating to their child. This right to "inspect and review" includes the right to have copies of records and to receive explanations and interpretations from school officials.
- Parents must provide written consent for release of personally identifiable information, with some exceptions.

FERPA

- FERPA has exceptions that allow disclosure without written parental consent, e.g.:
  - Legitimate educational interests
  - Juvenile justice exception
  - Research exception
  - Child abuse reporting exception
  - Court order
  - Others

- Release is permitted but not required to tribal organizations when an ICWA protected child is in foster care where the tribal organization is legally responsible for the care and protection of a child in foster care.

Does FERPA Treat Mental Health Records Differently?

- FERPA does not allow schools to protect health and mental health information differently than other school information when it is created by school personnel for students through high school.
What About School Based Health Centers?

- Must determine whether the school based health center is separate from school.
- One factor to consider is whether the health care provider owns the medical practice and controls medical records.
- Another factor to consider is who is paying for the service and identifying children who use the service.
- Site of service is not controlling.

Sharing Information

- Talk with the child and family about what information is being sought and why.
- Even if the child and family agree to share information, only share the information that is needed.
- Sharing information is an opportunity to create understanding about the child: think about what your audience needs to help the child.
- Remember that documents describing a child can have long lasting impacts and may be read in the future.